

**EXHIBIT A**

20. With regard to the defendants' prior convictions, on April 5, 1993, in Huntingdon County Court, Huntingdon, Pennsylvania, under Docket No. 1991 CA 438, **James Loner**, was convicted of possession with intent to deliver cocaine and was sentenced to fifteen to fifty-nine months imprisonment. On January 21, 1994, in Huntingdon County Court, Huntingdon, Pennsylvania, under Docket No. 1992 CA 222, **Kenneth Simmons, Jr.**, was convicted of delivery of cocaine and was sentenced to ten to thirty-six months imprisonment. Because of their felony convictions, the defendants were prohibited from possessing the firearms or ammunition.

**Victim Impact**

21. The Government has identified no specific victim in the instant case.

**Adjustment for Obstruction of Justice**

22. There is no evidence that the defendant impeded or obstructed justice.

**Adjustment for Acceptance of Responsibility**

23. The defendant, at the direction of counsel, declined to discuss the offense because he intends to appeal. Mr. Loner related that he has not "messed" with crack since 1994, when he reportedly overcame his crack addiction.

**Offense Level Computation**

24. The sentencing guidelines effective November 1, 1998, were used in the following calculations. .
25. In the case of **James N. Loner, Jr.**, Count I (conspiracy to distribute and possess with intent to distribute cocaine) and Count II (distribution and possession with intent to distribute cocaine base) are grouped into a single group under USSG § 3D1.2(b), because they involve a conspiracy and a substantive count. Count VIII (felon in possession of ammunition) is also grouped into this group under § 3D1.2(c), because the count embodies conduct that is treated as a specific offense characteristic in the applicable guideline. Count VI (aiding and abetting another to use or carry a firearm during and in relation to a drug trafficking crime) is excluded from grouping under USSG § 3D1.1(b), because the statute mandates a consecutive sentence and becomes its own group. However, the Count VIII conduct is then excluded as a specific offense characteristic in the drug violation's group because of the Count VI conviction, pursuant to § 2K2.4, Application Note 2.

**GROUP ONE - Counts I, II and VIII**

- \* 26. **Base Offense Level:** The guideline for 21 USC § 846 and § 841 offenses is found in USSG § 2D1.1, which provides for a base offense level of thirty-eight for offenses involving 1.5 kilograms or more of cocaine base. 38

**EXHIBIT B**

1 MR. DEVECKA: Well, I told you off the record at  
2 sidebar that I wasn't able to do that.

3 THE COURT: I've got to go by the status of the  
4 case now.

5 MR. DEVECKA: I understand that, Your Honor, and  
6 arguing the earlier opinion I think does nothing.

7 \*THE COURT: All right. Mr. Loner, this is a very  
8 sad situation because I personally feel that these federal  
9 sentencing guidelines are much, much more severe than they  
10 should be when we are dealing with cocaine and crack cocaine.  
11 Unfortunately the law requires me to comply with the federal  
12 sentencing guidelines which creates the range where I must  
13 sentence you, and I hope at some point that something might  
14 occur that would enable the Court to reduce your sentence  
15 because I think a sentence such as I have to impose on you  
16 today is very unfair and unrealistic, but, as I said, and I'm  
17 not a member of the Congress, but I do have to comply with  
18 whatever laws they enact.

19 Pursuant to the Sentencing Reform Act it is the  
20 judgment of the Court that the defendant James N. Loner, Jr.  
21 be committed to the custody of the Bureau of Prisons to be  
22 imprisoned for a term of 360 months. This term consists of  
23 terms of 360 months on each of Counts I and II and 60 months  
24 on Count VIII. These sentences are to be served  
25 concurrently. On Count VI the defendant is ordered to serve

**EXHIBIT C**

of judicial proceedings." Johnson, 520 U.S. at 466-67 (internal quotations and citations omitted); United States v. Olano, 507 U.S. 725, 732-36 (1993). Loner's argument must be rejected because Apprendi error occurred and therefore he cannot satisfy the first plain error factor.

In Apprendi, the Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 120 S.Ct. at 2362-63. Under this regime, the "prescribed statutory maximum" is the punishment the defendant faces under the facts found by the jury. See id. At 2359, 2362-63; United States v. Nordby, 225 F.3d 1053, 1059 (9<sup>th</sup> Cir. 2000). Additionally - and of central importance in this case - is that determining whether an Apprendi error has occurred requires that each specific sentence must be individually assessed in terms of the prescribed statutory maximum on the relevant count. See Apprendi, 120 S.Ct. at 2354.

\* In Loner's case, each specific sentence he received fell within the prescribed statutory maximum sentence on the relevant count, and therefore Apprendi was not violated. First, as for the drug counts, the District Court did not submit the issues of drug quantity or drug type attributable to Loner to the jury. Under these circumstances, the only penalty authorized by the jury's guilty verdict is the one set forth in 21 U.S.C. §841(b)(1)(C), which (with one exception not relevant here) criminalizes conduct involving controlled substances without reference to drug quantity. See United States v. Jones, 235 F.3d 1231, 1236 (10<sup>th</sup> Cir. 2000); see also United States v. Anderson, 236 F.3d 427, 429 (8<sup>th</sup> Cir. 2001) (per curiam). The prescribed statutory maximum sentence under that provision is 30 years if the violation was committed "after a prior conviction for a felony drug offense has become final." 21 U.S.C. §841(b)(1)(C). Loner has a prior felony drug offense: in 1991 he pled guilty in

EXHIBIT

GENERAL INDUSTRY  
SAFETY & HEALTH  
OUTREACH TRAINING PROGRAM



INTRODUCTION TO OSHA  
PERSONAL PROTECTIVE EQUIPMENT  
HAZARDOUS COMMUNICATION  
FLAMMABLE AND COMBUSTIBLE LIQUIDS  
CONFINED SPACE

MEANS OF ESCAPE AND FIRE PROTECTION  
ELECTRICAL AND LOCKOUT/TAGOUT  
WALKING AND WORKING SURFACES  
MACHINE GUARDING

OSHA 900051562

January  
2006

C. Johnson  
Safety Specialist / Instructor

Certificate of Achievement

awarded to

*James Loner*

for successfully completing

The Accounting Essentials ACE Class

09-10-2007  
Date Completed

*[Signature]*  
ACE Coordinator

Certificate of Achievement

awarded to

*James Loner*

for successfully completing

The Communication Skills ACE Class

05-28-2008  
Date Completed

*[Signature]*  
ACE Coordinator

Certificate of Achievement

awarded to

*James Loner*

for successfully completing

The Business Etiquette ACE Class

03-20-2008  
Date Completed

*[Signature]*  
ACE Coordinator

Certificate of Achievement

This certifies that

**James Loner**

has satisfactorily completed

The Victim Impact Program

July 2001 to May 2002

FCI Schuylkill  
Minersville, PA

*[Signature]*  
C. Widen

*[Signature]*  
A. Friedman

*[Signature]*  
A. Friedman

Achievement  
Award

This certificate is presented to

**James Loner**

for completing

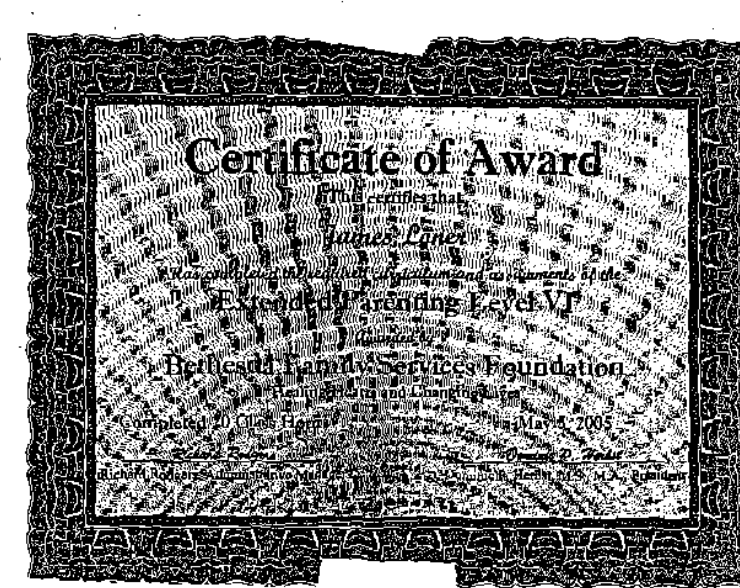
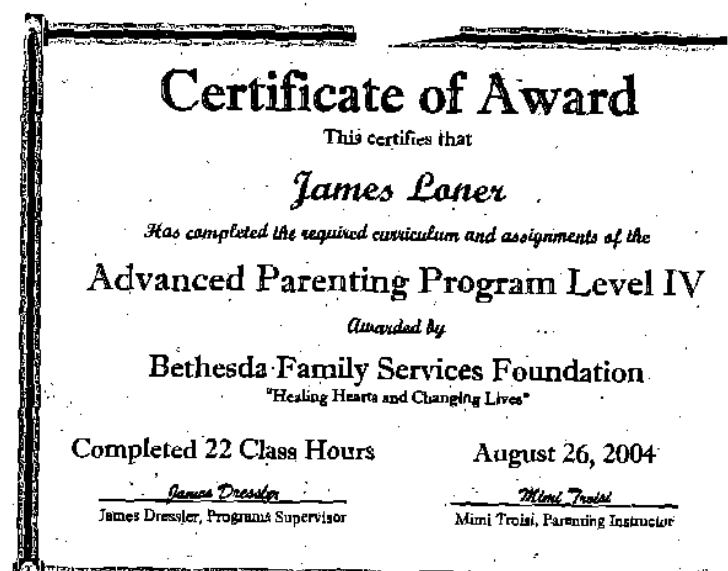
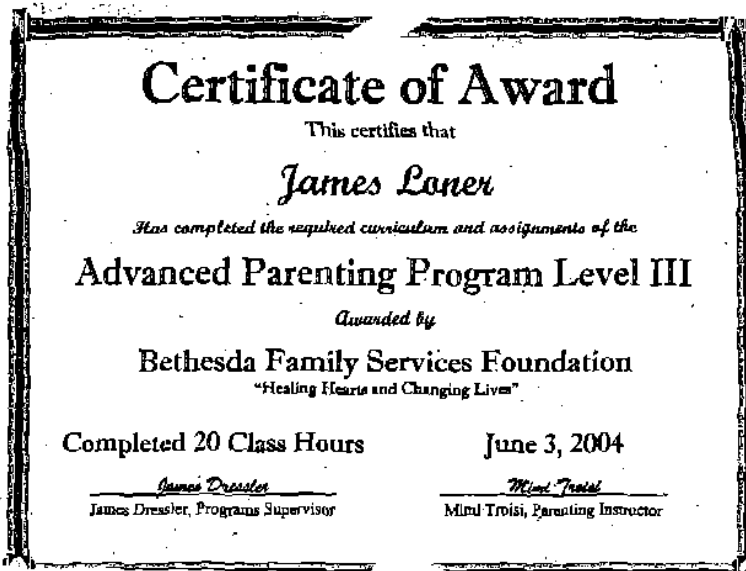
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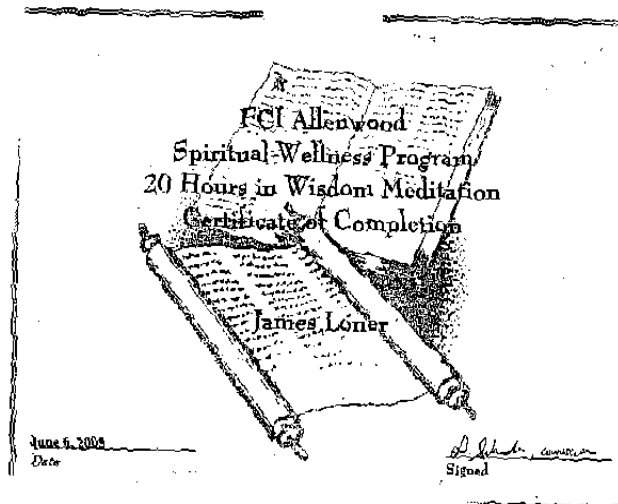
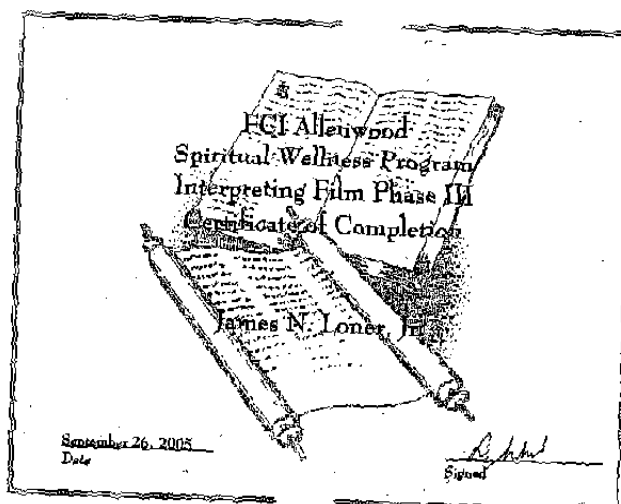
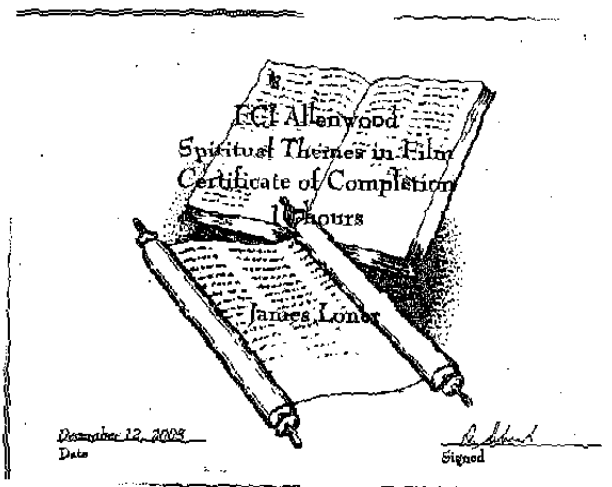
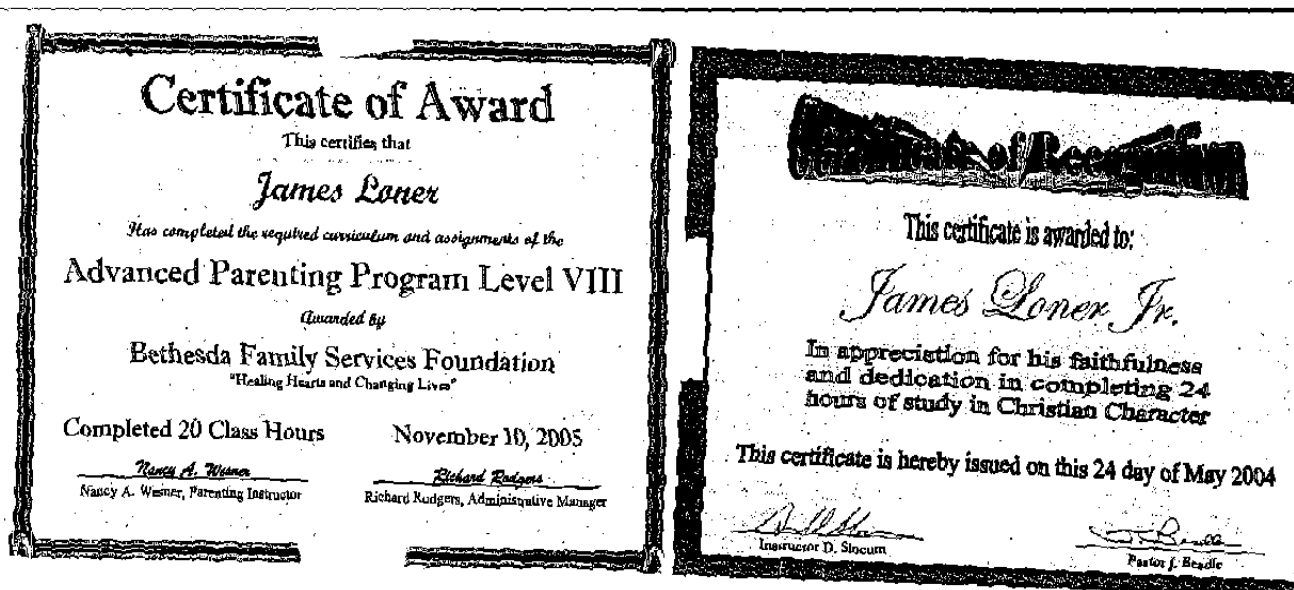
September 2, 2003

FCI Schuylkill

*[Signature]*  
R. Smith, Chairman







ESTAA \* INMATE EDUCATION DATA \* 06-10-2008  
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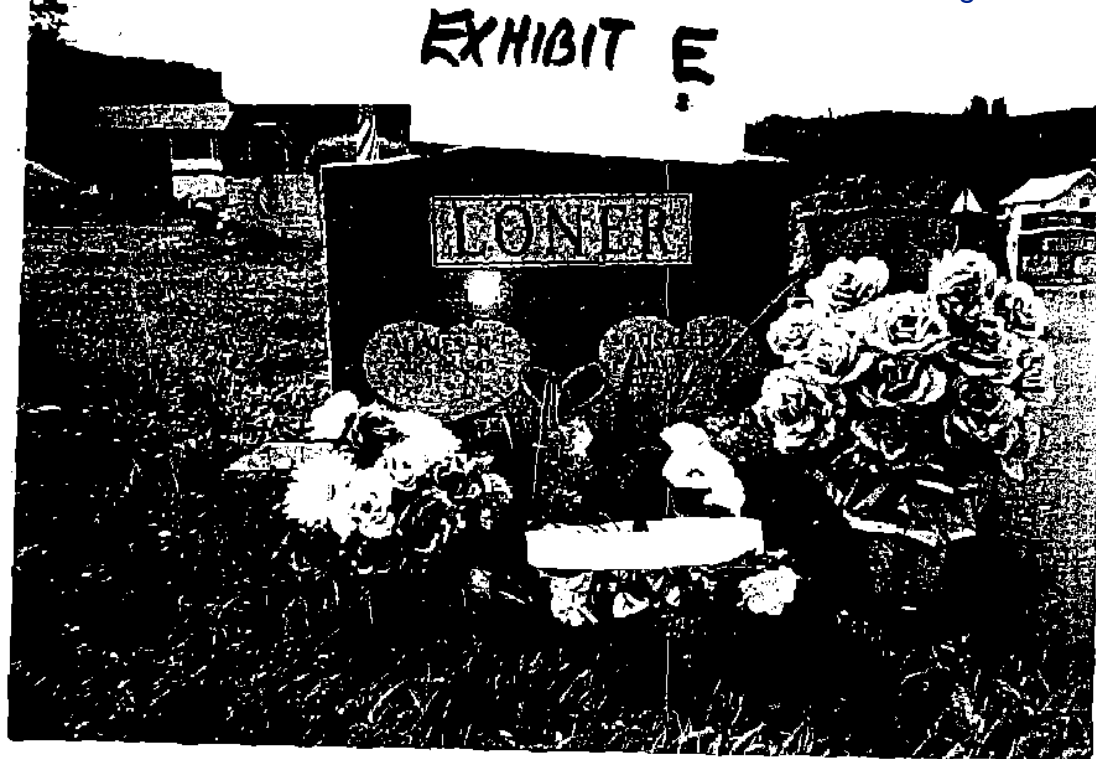
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----- EDUCATION INFORMATION -----  
 FACL ASSIGNMENT DESCRIPTION START DATE/TIME STOP DATE/TIME  
 EST ESL HAS ENGLISH PROFICIENT 01-11-2001 1445 CURRENT  
 EST GED HAS COMPLETED GED OR HS DIPLOMA 01-04-2001 1056 CURRENT

----- EDUCATION COURSES -----  
 SUB-FACL DESCRIPTION START DATE STOP DATE EVNT AC LV HRS  
 EST COMMUNICATION SKILLS (#6PG) 05-01-2008 05-31-2008 P C P 8  
 EST BUSINESS ETIQUETTE (#2 EM) 03-01-2008 03-31-2008 P C P 8  
 EST ACCOUNTING ESSENTIALS (#3) 04-01-2008 04-30-2008 P C P 8  
 EST INFECTIOUS DISEASE PREVT (HN#1) 04-17-2008 04-17-2008 P C F 1  
 ALM PARENTING ADVANCED LEVEL 3 04-01-2004 02-15-2006 P C P 20  
 ALM 10 HOUR OSHA TRAINING 11-09-2005 01-25-2006 P C P 18  
 ALM LEGAL RESEARCH ACE COURSE 06-29-2004 08-25-2004 P C P 18  
 SCH BEAT THE STREET 08-08-2003 09-02-2003 P C P 5  
 SCH PRE-REL VICTIM IMPACT GROUP 07-20-2001 03-29-2002 P C P 68  
 SCH PARENTING TWO 08-30-2001 11-09-2001 P C P 22  
 SCH FCI PAR 1A - PARENTING ONE 06-05-2001 08-14-2001 P C P 22

G0000 TRANSACTION SUCCESSFULLY COMPLETED

# EXHIBIT E



*Autograph*



STEWART L. KURTZ  
JUDGE  
COURT OF COMMON PLEAS  
HUNTINGDON COUNTY COURTHOUSE  
HUNTINGDON, PENNSYLVANIA 16831-1400  
610.666.1010

April 30, 2008

Mr. James Lonner  
Reg. NO. 00002-067  
ECI Exil (med)  
P. O. Box 699  
Exil, South Carolina 29918

Dear James:

In response to your letter, I would advise you that Canon 2 of the Code of Judicial Conduct prohibits me from making any recommendations or from testifying as a character witness.

Given Judge Caldwell's comments, I don't really think you need much help.

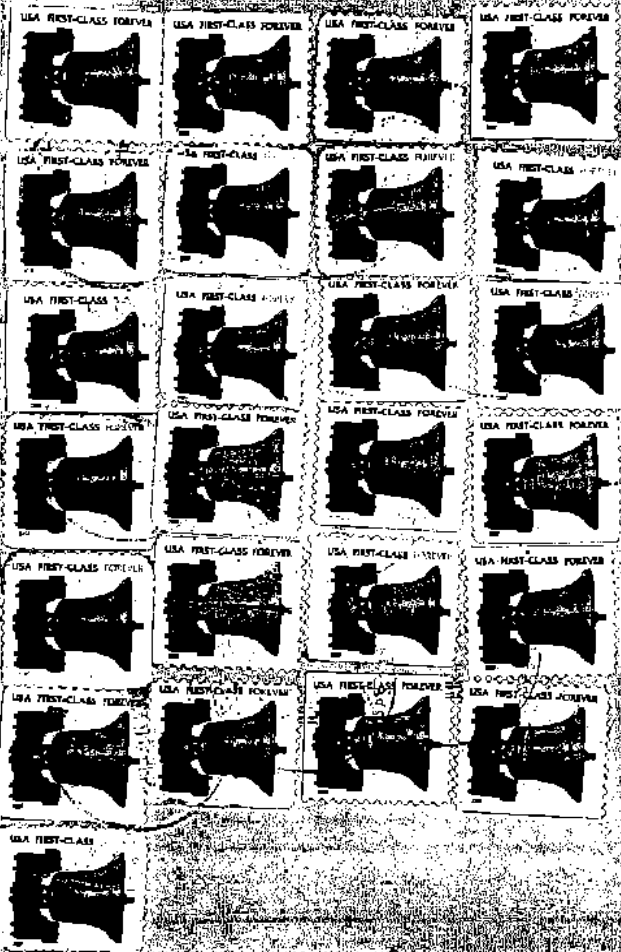
Best regards, I am

Sincerely,

*Stewart L. Kurtz*  
STEWART L. KURTZ

SLK/enk





OFFICE OF THE CLERK  
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Middle District of Pennsylvania  
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Harrisburg, Pa. 17108

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Metall, SC 29918

